Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Petition of Core Communications, Inc. for Forbearance under 47 U.S.C. § 160(c) from Rate Regulation Pursuant to § 251(g) and for Forbearance from the Rate Averaging and Integration Regulation Pursuant to § 254(g)	WC Docket No. 06-100

COMMENTS OF VERIZON

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INTRODUCTION AND SUMMARY

The instant petition for forbearance marks the *eighth* time that Core Communications, Inc. ("Core") — the "poster boy of reciprocal compensation gamesmanship," in the Commission's own words[2] — has sought to promote its own short-term interest in regulatory arbitrage at the expense of rational, pro-competitive regulation.[3] Once again, Core seeks to obtain reciprocal compensation for dial-up calls routed to the Internet through its ISP customers. This time, however, Core seeks to achieve that result by having the Commission do away with existing interstate and intrastate access charge regimes, and turn over rate-setting authority for all telecommunications traffic to 50 state commissions. Core further asks the Commission to

[1] The Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

[2] Response of FCC to Emergency Motion for Stay at 14, *WorldCom, Inc. v. FCC*, Nos. 01-1218 *et al.* (D.C. Cir. filed June 12, 2001).

[3] Core's prior efforts have included three mandamus petitions, a request for a stay of the *ISP Remand Order*, and petitions for rehearing and a writ of certiorari from the D.C. Circuit's decision in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), *cert. denied*, 538 U.S. 1012 (2003), not to vacate the *ISP Remand Order* — all of which were denied — and Core's earlier petition for forbearance, which this Commission denied in pertinent part.

forbear from enforcing in their entirety the rate averaging and rate integration rules set forth in 47 U.S.C. § 254(g) and the Commission's implementing regulations.

Core's petition is both procedurally and substantively improper, and should be rejected. Procedurally, Core has failed to demonstrate that it is subject to the relevant statutory provisions and the unspecified regulations implicated by its petition. Section 160(c) is clear, however, that a carrier may only seek forbearance from regulations that apply to it and to services that it offers. Moreover, simply forbearing from § 251(g) and unspecified "related implementing rules" will not, contrary to Core's assumption, automatically subject all telecommunications traffic to reciprocal compensation under § 251(b)(5). Rather, what Core actually requests is the imposition of *new* regulations subjecting ISP-bound traffic to reciprocal compensation — as was true of its prior forbearance petition — as well as *new* regulations for other interexchange traffic. But § 160 does not authorize the Commission to *create* regulatory requirements, so granting Core's petition would not obligate ILECs to make the reciprocal compensation payments Core so desperately seeks, as this Commission explained to the D.C. Circuit the last time Core tried the forbearance approach.

Substantively, Core falsely presents its petition for forbearance from the requirements of § 251(g) and the unspecified implementing regulations as a cure-all for the Commission's pending *Intercarrier Compensation* rulemaking.[4] Even aside from the fact that granting Core's petition could not create new intercarrier payment obligations, the issues pending before the Commission in that proceeding go well beyond the question whether access charges, reciprocal

[4] *See* Further Notice of Proposed Rulemaking, *Developing a Unified Intercarrier Compensation Regime*, 20 FCC Rcd 4685 (2005) ("*Intercarrier Compensation FNPRM*"); Notice of Proposed Rulemaking, *Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd 9610 (2001).

compensation, or some other rate should apply to a particular call. These other issues include how (if at all), on a going-forward basis, to regulate VoIP traffic, transit traffic, and Virtual NXX traffic; what various carriers' transport obligations are with respect to wireless-to-wireline traffic; how (if at all) to address the claims of "phantom traffic"; and whether to rely on voluntary arrangements or mandated agreements for intercarrier payment arrangements. None of these issues can be resolved under any circumstances by a grant of Core's petition. Indeed, Core's suggestion that the Commission pursue intercarrier payment reform through forbearance is, in fact, an invitation to regulatory confusion, uncertainty, and litigation, which would significantly impede the Commission's goal of rational reform.

In any event, Core's petition does not satisfy the statutory standard, just as this Commission found was the case with Core's prior petition. Indeed, Core entirely ignores this Commission's order *rejecting* its last attempt to obtain reciprocal compensation for ISP-bound calls, finding that such a result would *not* promote just and reasonable rates, the protection of consumers, or the public interest.[5] The Commission there found that Core's preferred regime had "'created opportunities for regulatory arbitrage and distorted the economic incentives related to competitive entry into the local exchange and exchange access markets'" and should not be permitted to return.[6] The Commission has also repeatedly found that a "market-based approach"

[5] *See* 47 U.S.C. § 160(a)(1)-(3).

[6] Order, *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, 19 FCC Rcd 20179, ¶ 18 (2004) ("*Core Forbearance Order*") (quoting Order on Remand and Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151, ¶ 2 (2001) ("*ISP Remand Order*") (subsequent history omitted)), *petitions for review pending, In re Core Communications, Inc.*, Nos. 04-1368 *et al.* (D.C. Cir. argued Oct. 27, 2005).

to interstate access charge reform is preferable to the imposition of intrusive regulations.[7] Core's failure even to address these prior Commission findings precludes the granting of its petition for forbearance from § 251(g) and certain, unspecified regulations.

With respect to Core's petition for forbearance from § 254(g), the application of the rate averaging and rate integration rules does limit the ability of nationwide carriers that operate in all parts of the country to compete in areas where they must go head to head with carriers that operate only in limited, relatively lower cost, geographic areas. In those circumstances, the rate averaging and rate integration requirements impose substantial burdens on the nationwide carriers that are not necessary — given the competition in those areas — to ensure just and reasonable rates or to protect consumers, and forbearance to provide national carriers with the flexibility they need to compete aggressively in those limited areas would be in the public interest.

DISCUSSION

I. CORE'S PETITION IS PROCEDURALLY IMPROPER AND SHOULD BE DISMISSED

A. Core Has Failed To Demonstrate That It Is Subject to § 251(g) or § 254(g)

Section 160 entitles a carrier to request that the Commission forbear from "applying any regulation or any provision of" the 1996 Act only "with respect to *that carrier*" or "any service offered by *that carrier*."[8] That is, Congress did not permit a carrier to seek forbearance solely

[7] First Report and Order, *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges*, 12 FCC Rcd 15982, ¶ 44 (1997) ("*Access Charge Reform Order*") (subsequent history omitted).

[8] 47 U.S.C. § 160(a), (c) (emphases added).

(and purportedly) on behalf of other carriers.[9] Here, Core has made no showing that it is, or that its services are, subject to either § 251(g) or the unspecified implementing regulations that are the subject of its forbearance petition. For example, the Commission's current rules governing intercarrier payments for ISP-bound traffic — and rejecting claims of companies such as Core that ILECs should be obligated to pay reciprocal compensation for ISP-bound traffic — were designed to protect ILECs from regulatory arbitrage by Core and other similar companies.[10] Those rules, therefore, are not a regulation of Core or of any purported services that Core provides to its ISP customers. Similarly, although Core seeks forbearance from § 254(g) and various Commission regulations, it makes no representation that it is a "provider[] of interexchange telecommunications service" covered by § 254(g).[11] Indeed, it is Verizon's understanding that Core provides no retail long-distance service. Absent a concrete showing that § 251(g) and § 254(g) actually apply to Core, its petition must be dismissed, because Core is not permitted to seek forbearance from statutory provisions and regulations that apply only to *other* providers or to some *other* providers' services.

B. Core's Request for Forbearance from § 251(g) Is an Improper Use of the Forbearance Provision

Core's petition is improper for the additional reason that the relief it requests — namely, entitling Core to obtain reciprocal compensation payments, under § 251(b)(5), for ISP-bound

[9] Although § 160 also permits a petition to be filed from rules "with respect to . . . those carriers, or any service offered by . . . [those] carriers," *id.* § 160(c), it is clear that the party seeking forbearance must be *one of* "those carriers."

[10] *See, e.g., ISP Remand Order* ¶ 2.

[11] The rate averaging requirement applies only if the carrier is a "provider[] of interexchange telecommunications services"; the rate integration requirement is even more limited, applying only to such services if they are interstate. 47 U.S.C. § 254(g).

traffic, as well as replacing interstate and intrastate[12] access charges with reciprocal compensation payments — cannot properly be achieved through forbearance from § 251(g). As the courts and the Commission have repeatedly recognized, § 251(g) merely made clear that Congress did not intend to upset or alter any pre-existing "court order, consent decree, or regulation, order, or policy of the Commission" regarding "equal access and nondiscriminatory interconnection restrictions and obligations" for "exchange access, information access, and exchange services."[13] As the D.C. Circuit put it in *WorldCom*, § 251(g) is simply "a transitional device, preserving various LEC duties that antedated the 1996 Act until such time as the Commission should adopt new rules pursuant to the Act."[14]

There are myriad Commission rules and regulations that fall within the scope of § 251(g)'s mandate — from price cap and rate-of-return rules, to non-discrimination and equal access obligations.[15] Core's petition does not indicate which of these rules are covered by its forbearance request, instead referring vaguely to § 251(g) "and related implementing rules."[16] Determining which of the Commission's manifold "implementing rules" would be affected if Core's request were granted would spawn litigation and regulatory uncertainty, rather than avoid

[12] In so far as Core's petition seeks forbearance from "state . . . access charge rules," Pet. at 2, that request is improper because the Commission's authority under § 160(a) is expressly limited to forbearance from "any provision of" the 1996 Act and "any regulation" promulgated to implement the 1996 Act.

[13] 47 U.S.C. § 251(g).

[14] *WorldCom*, 288 F.3d at 430; *see also Competitive Telecomms. Ass'n v. FCC*, 117 F.3d 1068, 1072 (8th Cir. 1997) (§ 251(g) "plainly preserves certain rate regimes already in place"); Order on Remand, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385, ¶ 47 (1999) (§ 251(g) is a "transitional enforcement mechanism").

[15] *See generally*, *e.g.*, 47 C.F.R. pts. 53 and 69.

[16] Pet. at 1; *see id.* at 18 (seeking forbearance from § 251(g) "and its related price regulations"); *see also id.* at 20 (seeking forbearance "from section 254(g) and its related implementing rules").

it. In this context, Core's petition should be denied "for failing to identify specific regulations or to explain how they meet the section 1[6]0 criteria."[17]

Core also has not shown that forbearance from § 251(g) could alter *any* existing rules. Because § 251(g) preserves pre-existing regulatory requirements, rather than imposing them anew, forbearance from § 251(g) would not alter any of those underlying, continued requirements. It is thus far from clear that forbearance from § 251(g) alone would effect *any* substantive regulatory change.

Even aside from the fact that the Commission's pre-existing requirements could not be eliminated or altered through forbearance from § 251(g), Core is wrong in assuming that forbearance would automatically "subject all telecommunications carriers to section 251(b)(5) of the Act . . . for rate setting purposes."[18] Indeed, this same erroneous assumption underlay Core's prior petition for forbearance. As the Commission explained in its brief to the D.C. Circuit defending the *Core Forbearance Order*, Core is simply wrong:

> Core's petition for forbearance, even if "deemed granted," would not result in the creation of a reciprocal compensation obligation for ISP-bound calls by extending § 251(b)(5) to such calls if, as the Commission has found in the past, that section does not apply to ISP-bound calls.[19]

Just as the Commission has never held that § 251(b)(5) applies to ISP-bound calls, it also has never held that § 251(b)(5) applies to calls that are currently subject to access charges. As Verizon has explained at length in its comments in the *Intercarrier Compensation FNPRM*, the

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[17] Memorandum Opinion and Order, *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, 20 FCC Rcd 19415, ¶ 16 (2005).

[18] Pet. at 1.

[19] Brief for Respondents at 50, *In re Core Communications, Inc.*, Nos. 04-1368 *et al.* (D.C. Cir. filed Sept. 2, 2005) ("FCC Br.").

relevant excerpts of which are attached as Exhibit A and incorporated by reference herein, § 251(b)(5), by its own terms, excludes ISP-bound traffic as well as all interexchange traffic.[20] The *ISP Remand Order* thus did nothing to modify the Commission's longstanding holding in the *Local Competition Order*[21] that § 251(b)(5) is limited to *intra*exchange calls.[22] Therefore, the same analysis applies to all of these calls — they could not become subject to § 251(b)(5) through the grant of a forbearance petition.

Instead, forbearance from § 251(g) would, at most, leave compensation for access charges unregulated and therefore subject to freely negotiated commercial arrangements among carriers. While this result may be sound public policy, Core's request is for something dramatically different — namely, the adoption of a completely new compensation regime in which reciprocal compensation would be imposed for the first time on all traffic, including ISP-bound traffic, that was formerly subject to interstate and intrastate access charges. As the Commission has recognized, such a request cannot be made through a forbearance petition: "An authority to forbear from a rule or a statute is not a vehicle for determining the applicability of the statute in the first instance."[23] Likewise, as the D.C. Circuit has held, "§ 160, prescribing

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[20] *See* Comments of Verizon in Response to Further Notice of Proposed Rulemaking at 13 n.14, 38-41 & Attachs. B-D, CC Docket No. 01-92 (FCC filed May 23, 2005).

[21] First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) ("*Local Competition Order*") (subsequent history omitted).

[22] In the *Local Competition Order*, the Commission repeatedly recognized that § 251(b)(5) is limited to local traffic. *See Local Competition Order* ¶ 1032 ("Congress intended to confine [§ 251(b)(5)] to local traffic."); *id.* ¶ 1033 ("The Act preserves the legal distinctions between charges for transport and termination of local traffic and interstate and intrastate charges for terminating long-distance traffic."); *id.* ¶ 1034 (concluding that "section 251(b)(5) reciprocal compensation obligations should apply only to traffic that originates and terminates within a local area").

[23] FCC Br. at 50.

when the Commission may forbear from applying statutory requirements, obviously comes into play only for requirements that exist; it says nothing as to what the statutory requirements are."[24]

II. CORE'S PETITION DOES NOT SATISFY THE STATUTORY STANDARDS FOR FORBEARANCE

A. Forbearance Could Not Provide a Rational Solution to the Pending *Intercarrier Compensation* Proceeding

Core's petition purports to offer the Commission a quick fix to the complex challenge of intercarrier compensation reform. Core presents its petition as a regulatory magic bullet for the pending *Intercarrier Compensation* proceeding, claiming that it would "enable the Commission to unify intercarrier compensation rates" in accordance with each of the objectives set forth in the *Intercarrier Compensation FNPRM*.[25] Core also suggests that the Commission need not affirmatively adopt its proposal, but could intentionally decide to "let it take effect through operation of Congress' statutory default remedy."[26]

In reality, however, as the Commission has recognized, there are a host of important issues that must be considered in any rational intercarrier compensation reform proposal. These include how (if at all), on a going-forward basis, to regulate VoIP traffic, transit traffic, and Virtual NXX traffic; what various carriers' transport obligations are with respect to wireless-to-wireline traffic; how (if at all) to address the claims of "phantom traffic"; and whether to rely on voluntary arrangements or mandated agreements for intercarrier payment arrangements. Core's forbearance petition has nothing to say about any of these issues, or a host of others.

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[24] *United States Telecom Ass'n v. FCC*, 359 F.3d 554, 579 (D.C. Cir.), *cert. denied*, 543 U.S. 925 (2004).

[25] Pet. at 1, 15, 16.

[26] *Id.* at 4.

Core's petition, therefore, is not in the public interest as it would hinder the Commission's goals by generating yet more regulatory uncertainty and unnecessary litigation pending the outcome of the Commission's *Intercarrier Compensation* proceeding.

B. Core's Claims for Forbearance from § 251(g) and Its Associated Regulations Have Already Been Rejected by the Commission

Core's petition is a thinly disguised effort to get this Commission to require payment of reciprocal compensation for ISP-bound traffic — this time, through the gambit of forbearance from the access charge regime in its entirety. Core's petition should be rejected because, as with its prior petition, it has provided "only a cursory analysis of how each of the three criteria [in § 160(a)] is satisfied," which consists of "assert[ions], without support," and "broad, unsupported allegations" backed by "no evidence."[27] Moreover, as with its previous efforts, Core fails even to acknowledge — much less to address persuasively — the Commission's repeated findings that it is reciprocal compensation for ISP-bound traffic that "undermines the operation of competitive markets" and "create[s] opportunities for regulatory arbitrage."[28] Nor does Core address the Commission's findings that any reductions in access charge rates should occur through the application of market forces rather than top-down regulation.

1. Forbearance Would Not Be in the Public Interest

Core's proposal that reciprocal compensation be imposed on all traffic would effectively subvert both the limitations on ISP-bound traffic established in the *ISP Remand Order* and the market-based reforms initiated in the *Access Charge Order*. Neither of those steps is in the public interest, and the Commission should not permit them.

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[27] *Core Forbearance Order* ¶¶ 16, 18.

[28] *E.g., ISP Remand Order* ¶¶ 2, 71.

Just 18 months ago, in the *Core Forbearance Order*, the Commission rejected Core's request for forbearance from the rate caps adopted in the *ISP Remand Order*, finding that those caps are in the public interest because they "remain necessary to prevent regulatory arbitrage and promote efficient investment in telecommunications services and facilities."[29] The Commission reiterated its prior finding in the *ISP Remand Order* that "the application by state commissions of per-minute reciprocal compensation rates to ISP-bound traffic 'created opportunities for regulatory arbitrage and distorted the economic incentives related to competitive entry into the local exchange and exchange access markets.'"[30] Like before, Core's current petition "provides no evidence" in support of Core's assertion that subjecting ISP-bound traffic to reciprocal compensation would be in the public interest.[31] Core points to no new developments that could alter the Commission's prior contrary conclusion. As in the *Core Forbearance Order*, Core's "broad, unsupported allegations" that § 251(g) promotes "regulatory arbitrage" should be rejected as insubstantial.[32]

Core also makes no effort to address the Commission's prior determinations that access charge reform should be achieved through market-based solutions rather than the imposition of additional regulations. In the *Access Charge Reform Order*, the Commission concluded "that a market-based approach to reducing interstate access charges will . . . better serve the public interest" than "a prescriptive approach in which [the Commission] actively set[s] rates at

[29] *Core Forbearance Order* ¶ 19.

[30] *Id.* ¶ 18 (quoting *ISP Remand Order* ¶ 2).

[31] *Id.*; *see also* Memorandum Opinion and Order, *Petition of SBC Communications Inc. for Forbearance from the Application of Title II Common Carrier Regulation to ISP Platform Services*, 20 FCC Rcd 9361, ¶ 3 (2005) (petitioner must provide "evidence . . . sufficiently specific to enable us to determine whether the requested forbearance satisfies the requirements of section 1[6]0").

[32] *Core Forbearance Order* ¶ 18.

economic cost levels."[33] A market-based approach not only "provide[s] a more accurate means of identifying implicit subsidies and moving access prices to economically sustainable levels," but is also "most consistent with the pro-competitive, deregulatory policy contemplated by the 1996 Act."[34] Moreover, the Commission concluded that "[u]ndoing the Gordian knot of determining the appropriate level of interstate access charges and converting implicit subsidies in interstate access charges into explicit, portable, and sufficient universal service support cannot be accomplished with one stroke of the sword."[35]

The very charge leveled by Core in its petition — namely, that the Act mandates an *immediate* remedy for the perceived defects in the existing access charge system — has been repeatedly rejected by the Commission, and by the courts, which have upheld the Commission's decision to pursue an incremental transition to a market-based approach.[36] Indeed, the Commission's experience indicates that its approach is working and that "[t]he benefits of lower access charges are being provided to consumers in a timely manner as envisioned by the

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[33] *Access Charge Reform Order* ¶ 44.

[34] *Id.*

[35] Sixth Report and Order, *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board on Universal Service*, 15 FCC Rcd 12962, ¶ 26 (2000) ("*CALLS I Order*").

[36] *See Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523, 546 (8th Cir. 1998) (upholding the *Access Charge Reform Order*); *Texas Office of Pub. Util. Counsel v. FCC*, 265 F.3d 313, 325 (5th Cir. 2001) (upholding the *CALLS I Order* and affirming that the FCC "reasonably exercised its predictive judgment in concluding that competition in the local telephone services market will effectively drive interstate access charges to economic costs"); *National Ass'n of State Util. Consumer Advocates v. FCC*, 372 F.3d 454 (D.C. Cir. 2004) (upholding the Commission's Order, *Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps; Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers*, 17 FCC Rcd 10868 (2002) ("*CALLS II Order*")); *id.* at 459, 460 (holding that the Act "does not decree an immediate revolution" and upholding the *CALLS II Order* as "eminently reasonable"; "Nothing in [the] *CALLS I* [*Order*] committed the Commission to the sea change in rate-setting urged by NASUCA, that is, immediately basing all LECs' rates solely upon forward-looking costs.").

Commission."[37] Core's petition neither addresses these findings nor presents any evidence that the public interest would be served by replacing access charges with state-prescribed reciprocal compensation.

2. Forbearance Would Undermine Just and Reasonable Rates and Would Result in Unreasonable Discrimination

Likewise, the Commission has already rejected Core's contention that reciprocal compensation for ISP-bound traffic is necessary to achieve "just and reasonable" rates or to avoid unreasonable discrimination among carriers.[38] To the contrary, the Commission has found that Core's proposal would actually result in unjust and unreasonable rates and unreasonable discrimination because reciprocal compensation rates enable CLECs "to offer service to [their] customers at rates that bear little relationship to [their] actual costs"[39] and, indeed, "to pay their ISP customers for the privilege of completing the calls."[40] For these reasons, reviving reciprocal compensation for ISP-bound traffic — which had grown to a $2 billion a year problem by 2001 — would be both unreasonable and discriminatory. At a minimum, as the Commission found before, "Core has not demonstrated that enforcement of the rate caps . . . is no longer necessary to ensure that charges and practices are 'just and reasonable,' or to prevent rates that are 'unjustly or unreasonably discriminatory.'"[41]

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[37] Order on Remand, *Access Charge Reform; Price Cap Performance Review for LECs; Low-Volume Long Distance Users; Federal-State Joint Board on Universal Service*, 18 FCC Rcd 14976, ¶ 45 (2003).

[38] *Core Forbearance Order* ¶ 22.

[39] *ISP Remand Order* ¶ 68.

[40] *WorldCom*, 288 F.3d at 431.

[41] *Core Forbearance Order* ¶ 23 (quoting 47 U.S.C. § 160(a)(1)).

The Commission has also already rejected Core's assertion that a flash cut from access charges to reciprocal compensation is needed to avoid "regulatory price discrimination."[42] As noted above, in the *Access Charge Reform Order*, the *CALLS I Order*, and the *CALLS II Order*, the Commission has taken steps toward its "long-standing policy . . . to require, to the extent possible, rate structures to reflect the manner in which carriers incur cost."[43] In each instance, however, the Commission rejected calls to impose cost-based rates by regulation and decided, instead, to pursue a market-based approach; those decisions were upheld by the courts each time.[44] In addition, as Verizon has shown elsewhere,[45] the reciprocal compensation rates that Core seeks to pay instead of existing interstate access rates are themselves unreasonable because they assume a hypothetical, ideally efficient network, and thus do not compensate carriers such as Verizon for the real-world costs of providing access services. On this point as well, Core has provided no evidence to cast doubt on the Commission's longstanding policies.

3. Forbearance Is Not Necessary To Protect Consumers

Finally, the Commission has correctly found that reciprocal compensation for ISP-bound calls is not necessary to protect consumers. To the contrary, the Commission concluded in the *Core Forbearance Order* that the interim provisions of the *ISP Remand Order* limiting compensation for ISP-bound traffic are necessary to protect end users of telephone service — in

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[42] Pet. at 19.

[43] *CALLS I Order* ¶ 129.

[44] *See supra* note 36.

[45] *See* Petition for Expedited Forbearance of the Verizon Telephone Companies at 2-5, 16, 19, *Petition for Forbearance from the Current Pricing Rules for the Unbundled Network Element Platform*, WC Docket No. 03-157 (FCC filed July 1, 2003); Reply Comments of Verizon Telephone Companies in Support of Petition for Expedited Forbearance at 3-4, *Petition for Forbearance from the Current Pricing Rules for the Unbundled Network Element Platform*, WC Docket No. 03-157 (FCC filed Sept. 2, 2003).

particular, "to prevent the subsidization of dial-up Internet access customers at the expense of consumers of basic telephone service."[46] It also rejected as unsupported by any evidence Core's "speculation" that those interim provisions "reduced competitive choices for consumers."[47] Core's petition likewise contains no such evidence and thus fails to meet its burden to show consumer harm.

In addition, "access charges continue to represent a significant revenue source" for LECs[48] needed to ensure that LECs are able "[t]o recover the costs of providing interstate access services."[49] Imposing artificially low reciprocal compensation rates on interexchange traffic, without providing for some other mechanism for LECs to recoup those costs, will mean that costs must be recovered from LEC customers. In many cases, however, price caps inhibit LECs from passing those costs on to customers. As the Commission has recognized, rule changes that abruptly cause "a substantial decrease in revenue for incumbent LECs . . . could prove highly disruptive to business operations," to the ultimate detriment of consumers.[50]

C. Forbearance from § 254(g) Is Warranted in Certain Circumstances Where Its Requirements Have Anticompetitive Consequences

Verizon agrees that there may be certain specific circumstances where forbearance from the rate averaging and integration rules is warranted. For example, in certain highly competitive, mainly urban markets, the rate averaging and rate integration rules are unnecessary to ensure just and reasonable rates or to protect consumers, and forbearance in those limited areas would be in

[46] *Core Forbearance Order* ¶ 25.

[47] *Id.*

[48] *Intercarrier Compensation FNPRM* ¶ 98.

[49] *CALLS I Order* ¶ 130.

[50] *Access Charge Reform Order* ¶ 46.

the public interest. As the Commission has previously acknowledged, the rate averaging and rate integration rules put nationwide interexchange carriers such as Verizon, which "offer long-distance services in both urban and rural areas," at a competitive disadvantage relative to carriers that offer long-distance services only within lower-cost urban areas.

For example, numerous long-distance carriers — both nationwide and regional — compete to serve customers in the Manhattan area, which is a relatively lower-cost market. The rate averaging rules have only a minimal effect on the regional companies, because they serve only the lower-cost area. In contrast, rate averaging has a far more significant impact on nationwide carriers such as Verizon. In certain rural areas, Verizon must pay access rates to LECs that are significantly higher than the rates that apply in lower-cost urban areas. Under the rate averaging rules, Verizon must pass these high rural access rates on to its customers nationwide, including customers in lower-rate areas, thus putting Verizon at a competitive disadvantage with respect to the regional carriers, which avoid those higher access charges by not serving rural areas. In such situations, forbearance is warranted because the rigid enforcement of the rate averaging and rate integration rules discriminates against nationwide long-distance carriers, undermines competition in urban markets, and ultimately disserves both consumers and the public interest.

CONCLUSION

For the foregoing reasons, Verizon respectfully requests that the Commission deny Core's petition for forbearance.

Respectfully submitted,

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